

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Washington, D.C.

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In the Matter of:

LINDA PHANAE EDWARDS,

Respondent.

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Docket No. 09-3597-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment and Termination of Existing Suspension dated June 04, 2009 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent LINDA PHANAE EDWARDS that HUD was proposing her debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a five-year period from the date of the final determination of this action. The Notice further advised Respondent that her debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent that her proposed debarment was based on her conviction in the United States District Court for the District of Colorado for violation of 18 USC § 1343 (Wire Fraud), § 2 (Aiding and Abetting), § 1001 (False Statements), and 42 USC § 408 (Use of a False Social Security Number). Respondent was also advised that the suspension imposed on her by HUD on March 15, 2005, was terminated.

A telephonic hearing on Respondent's debarment was held in Washington, D.C. on October 28, 2009,<sup>1</sup> before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present by phone, appearing *pro se*. Brendan Power, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government

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<sup>1</sup> The record was kept open for Respondent and the Government to file post-hearing submissions by November 4, 2009, and November 12, 2009, respectively. The Respondent's submission was received on November 4, 2009, and the Government's on November 10, 2009.

for a period of 9 months from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment and Termination of Existing Suspension dated June 04, 2009.
2. A letter dated June 29, 2009, from Respondent addressed to HUD for the attention of the Debarring Official's Designee, requesting a hearing.
3. Respondent's post-hearing submission received November 4, 2009 (including all attachments thereto).
4. The Government's Pre-hearing Brief filed September 22, 2009 (including all exhibits and attachments thereto).
5. The Government's Reply in Support of Five-year Debarment filed November 10, 2009.

#### Government Counsel's Arguments

Government counsel states that Respondent, a real estate agent, was indicted in 2005 for fraudulent conduct. Respondent engaged in this conduct over a period from October 1999 to July 2004, in connection with a scheme in which Respondent along with other persons fraudulently assisted buyers to qualify for FHA-insured loans. Respondent and her codefendants carried out the scheme by creating bogus papers to document buyers' employment, as well as false W-2 forms, gift letters, and social security numbers. Respondent also attended the closings on behalf of the buyers and received a commission from which Respondent paid kickbacks to her coconspirators. Respondent was convicted in July 2008 for her role in these illegal activities on several counts involving wire fraud, false statements, use of a false social security number, and aiding and abetting. Respondent was sentenced to 41 months' imprisonment and ordered to make restitution of \$526,599.71 jointly and severally with her coconspirators.

Counsel argues that Respondent, pursuant to 2 CFR § 180.150 and 24 CFR 2424.995, is covered by HUD's debarment regulations. Also, Respondent, as a real estate agent involved in FHA-insured transactions, was a participant and principal under 2 CFR §§ 180.200, 180.970(a)(6), (7), and (9), and 180.980. Counsel argues too that Respondent's conviction for loan fraud and deceptive practices provides cause for her debarment under 2 CFR 180.800(a)(1) and (3). Moreover, Respondent's fraudulent conduct indicates a lack of business integrity and business honesty that seriously affects her present responsibility, thus providing additional cause for her debarment under 2 CFR 180.800(a)(4). Counsel also argues that the Government's burden and the standard of proof required to establish cause for Respondent's debarment is met because her debarment is based upon a conviction. *See* 2 CFR 180.800(a)(1) & (3) and 180.850 (a) & (b). Respondent's actions, which counsel reiterates indicate a lack of honesty and integrity, demonstrate that her debarment would be in the public interest. The Government, counsel asserts, must be able to depend upon its participants' honesty, integrity, and responsibility in its business dealings. Counsel also rejects as irrelevant and without merit in this proceeding, Respondent's arguments that she committed no crime, does not owe the court-ordered restitution of \$526,599, and has had sufficient time to reflect on her conduct, citing Respondent's own admission that her conviction standing alone is sufficient grounds for debarment. Counsel alleges also that Respondent's lack of

remorse and refusal to accept responsibility for her misconduct is evidence that she may be a continuing risk to HUD-funded programs.<sup>2</sup>

Counsel concludes that Respondent's conviction supports a five-year debarment from the date of this Determination. Counsel contends that 2 CFR 180.865(b) only requires the Debarring Official to "consider" the time Respondent was suspended in determining the period of debarment. According to counsel, "there is no requirement that the Respondent be credited for the period of suspension already served." Counsel continues that because of the "egregious nature and scope of the fraudulent scheme" for which Respondent was convicted and the loss suffered by HUD, "it is appropriate that Respondent not be credited for the period she has already been suspended in determining the period of Respondent's debarment."<sup>3</sup>

### Respondent's Arguments

Respondent testified that she was not authorized to handle loan transactions, and relied on HUD-approved lenders for the accuracy and authenticity of the documents provided on behalf of potential buyers. Respondent also testified that she has had sufficient time to reflect on her actions, including four and a half years of "pre-trial probation," nine months in jail, and lost income of \$1.5 million. Respondent disputed the accuracy of the computations used to determine the amount of restitution she should have to make. In her written post-hearing submission, Respondent reiterated her testimony, emphasizing her limited role and reliance on others in the homebuying process. According to Respondent, she had "no access to the buyers' information or loan package" and was "not required to verify social security numbers, income, gift letters, downpayments, or deposit."

Respondent also declares that she does not "owe any amount" and insists that any loss suffered by HUD was attributable to the violation of HUD regulations by a mortgagee, Rocky Mountain Mortgage Specialist, which paid fines assessed by HUD for committing the violations. In addition to the factors mentioned in her oral testimony, Respondent added as matters she has had time to reflect on during her "ordeal," her suspension and denial of participation in government programs since March 2005, five indictments between 2004 and 2007, loss of credibility and respect, and separation from family and friends, and the fact that she suffered a heart attack and is hypertensive. Respondent concludes that for these reasons "any more time in the debarment process will be inhumane."

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<sup>2</sup> See Government's Reply in Support of Five-Year Debarment.

<sup>3</sup> Gov't Brief at 8.

## Findings of Fact

1. Respondent at all relevant times was a real estate agent who participated in transactions in connection with the sale of property with HUD-insured mortgages.
2. Respondent engaged in a scheme in which she and others fraudulently assisted buyers to qualify for FHA-insured loans by creating bogus gift letters, W-2 forms, social security numbers, and employment verifications.
3. Respondent was indicted along with other coconspirators and convicted on charges of wire fraud, false statements, use of a false social security number, and aiding and abetting.
4. Respondent was sentenced to a prison term of forty-one months, three years' supervised release, and ordered to pay restitution of \$526,599.71.
5. Respondent was suspended by HUD from March 15, 2005, until her suspension was terminated on the issuance of the Notice of Proposed Debarment on June 4, 2009.

## Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant or principal in a covered transaction -- the HUD-insured mortgages on the properties she sold. *See* 2 CFR 180.200 and 180.970(a).
2. As defined in 2 CFR 180.980, a "participant" is "any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant."
3. Respondent is covered by the debarment regulations at 2 CFR part 180. Specifically, 2 CFR 180.120 provides that subparts A through I of part 180 apply to a "(a) person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction."
4. Respondent's conviction for fraud, making false statements, and use of a false social security number provides cause for her debarment. *See* 2 CFR 180.800(a)(1), (3) and (4).
5. The Government has met its burden of establishing that cause for Respondent's debarment exists by virtue of Respondent's conviction. *See* 2 CFR 180.850 and 855.
6. Respondent's misconduct raises serious concerns about her present responsibility and her debarment would be in the public interest. *See* 2 CFR 180.125.
7. Respondent has expressed no regrets or remorse for her actions and continues to deny responsibility for her misconduct.
8. Respondent has raised no mitigating factors, and none are apparent to the Debarring Official, that are cognizable under 2 CFR 180. 860.
9. The regulation at 2 CFR 180.865(a) states that "[g]enerally a debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment." Paragraph (b) of 2 CFR 180.865 allows the debarring

official to “consider the factors in 2 CFR 180.860” in determining the period of debarment. In this matter, aggravating factors considered in justifying a period of debarment longer than the usual three years were the financial loss suffered by HUD, in excess of \$526,000.00; the fact that Respondent engaged in the fraudulent scheme for almost five years; the fact that Respondent was at least partly responsible for planning and carrying out the wrongdoing; and Respondent’s apparent reluctance to accept responsibility for her wrongdoing.

10. In part, 2 CFR 180.865(b) also provides that “[i]f a suspension has preceded your debarment, the debarring official must consider the time you were suspended.” As the record shows, Respondent was suspended from March 15, 2005 to June 4, 2009, a period of over four years. The practical effect of a suspension is no different from that of a debarment. In pertinent part, a “debarment” is defined as “an action taken . . . to exclude a person from participating in covered transactions and transactions covered under” the FAR. *See* 2 CFR 180.925. *Compare* 2 CFR 180.1015, defining “suspension” as “an action taken . . . that immediately prohibits a person from participating in covered transactions and transactions covered under” the FAR. Clearly, except for the immediacy of the action in a suspension, both procedures result in exclusion “from participating in covered transactions and transactions covered under” the FAR. Further, “exclusion” means a “person . . . is prohibited from being a participant in covered transactions, whether the person has been suspended [or] debarred.” Although 2 CFR 180.865(b) is couched in mandatory terms, that is, “must consider,” it does not command the Debarring Official to “credit”<sup>4</sup> the period of suspension. The absence of a mandate in the regulation requiring the Debarring Official to “credit” a respondent’s period of suspension is not, however, inconsistent with a reading of the regulation that, at least in a proper case, constrains the Debarring Official to do just that.<sup>5</sup> Arguably, in a case in which, for example, the respondent is shown to have engaged in a covered transaction during the respondent’s suspension, the regulation may allow the Debarring Official to ignore the period of suspension in arriving at an appropriate period of debarment.<sup>6</sup> The instant case is

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<sup>4</sup> *See* Govt’s Reply.

<sup>5</sup> In *In the Matter of Philip D. Winn*, HUD proposed debarring the Respondent, a former HUD Assistant Secretary, for an indefinite period from the date of his suspension, March 2, 1993. The court acknowledged that “debarments generally should not exceed three years,” found that “an indefinite period of debarment [was] not warranted,” and debarred Winn for four years through March 7, 1997, “credit being given for the period of suspension.” 1995 HUD BCA Lexis 5, \*21 (June 9, 1995). *See also*, *In the Matter of Daniel J. Robertson*, where HUD proposed Respondents’ debarment for five years from the date of their suspension. The Administrative Judge rejected Respondents’ plea that the period of exclusion was excessive, holding that “debarment is a prospective sanction, and cannot be applied retroactively [.] but did “credit the time during which Respondents [were] suspended,” notwithstanding the court’s finding “the extent and venality of the fraud to still be shocking years after it occurred.” 1993 HUD BCA LEXIS 5, \*15.

<sup>6</sup> *See, e.g., In the Matter of Robert E. Martin*, 1989 HUD BCA LEXIS 15 (September 7, 1989) where the Administrative Judge declined to credit the Respondent with the time he had been suspended because “Respondent’s concept of responsibility and obligation had deteriorated rather than improved since the suspension was imposed on him.” *Accord In the Matter of Kay Yarbrough*, 1991 HUD BCA LEXIS 15

not that case, however.<sup>7</sup> There is nothing in the record before the Debarring Official that suggests Respondent has, during her suspension, engaged in a covered transaction. For that reason, it would be appropriate to “consider,” that is, offset, the Respondent’s period of suspension against the proposed five-year debarment.<sup>8</sup>

11. Respondent’s suspension was imposed on March 15, 2005, and terminated by the Notice of Proposed Debarment and Termination of Existing Suspension on June 4, 2009, a period of approximately 4 years and 3 months. The Notice proposed debarring Respondent for five years from the date of this Determination. However, based on the foregoing analysis, which supports the conclusion that Respondent should receive credit for the period of her suspension, Respondent will serve a period of debarment for 9 months from the date of this Determination. It is worth repeating that the Government’s arguments and the factual evidence, along with the cases the Government cites to justify Respondent’s debarment, support a five-year exclusion. Accordingly, to deny Respondent credit for the period of suspension, thus effectively extending her period of exclusion to almost ten years

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(October 28, 1992) (because [Respondent’s] lack of present responsibility is so glaring and troubling, I cannot, in good conscience, credit [Respondent] with the time she has been suspended in calculating the period of her debarment, because that time has not been used by her to become responsible.)

<sup>7</sup> It should be noted in passing that Respondent’s suspension lasted well over four years because, among other things, of the time involved in prosecuting her criminal case. Thus, if her criminal prosecution had consumed less time, say, two years, the Government, presumably, would be proposing that the lesser period of suspension also not be credited. Arguably, therefore, based on the mere happenstance of how expeditiously or timely her criminal matter was disposed of, Respondent, again, based on the Government’s logic, now could be facing a seven-year exclusion, not an almost ten-year exclusion. See *Winn and Robertson, supra* at n. 5. If this approach were adopted, it would suggest an arbitrariness in imposing periods of exclusion which would be inconsistent with the settled view that the duration of a debarment should be the shortest amount of time necessary to ensure that risk to the Government is minimized. See *In re. Richard Duane Wilder*, HUDALJ 92-1766-DB (June 18, 1992).

<sup>8</sup> The Government argues in its brief, at p.8, that “given the particularly egregious nature and scope of the fraudulent scheme that Respondent was convicted for and the substantial loss incurred by HUD (See Exhibits 1 and 7), it is appropriate that Respondent not be credited for the period she has already been suspended in determining the period of Respondent’s debarment.” If the Government’s rationale were accepted, the Government, if only by implication, would be asking the Debarring Official to approve an almost ten-year exclusion of the Respondent. The arguments in the Government’s brief, however, support only a five-year debarment and allude to the Respondent’s bad conduct. Further, the cases cited by the Government justify only a five-year exclusion, not the usual three-year debarment. The Government, it would seem, would like to have it both ways. First, the Government would urge the Debarring Official again to take into consideration Respondent’s bad conduct, which is the very basis that the Government used to justify the proposed five-year debarment. But the Government also relied on that bad conduct in suspending Respondent. Nonetheless, now the Government argues the period of suspension could be ignored in calculating Respondent’s period of debarment, although the suspension was imposed for the very same bad conduct that, as noted above, is the basis for proposing a five-year debarment. The Government’s tautology, if nothing else, seems more of an argument to credit the five-year suspension than to ignore it. See, e.g., *In the Matter of PFG Mortgage Inc.*, 1992 HUD BCA LEXIS 13 (October 9, 1992), where the Administrative Judge, in considering Respondents’ appeal of immediate withdrawal of their mortgagee approval for six years, which was consolidated with the appeal of the company’s CEO of his proposed three-year debarment, determined that “withdrawal of [the] mortgagee approval is based upon the same evidence as the debarment, [thus] the withdrawal of [the] mortgagee approval should terminate upon the expiration of the period of debarment.” The Administrative Judge also gave “appropriate credit . . . from the date of [the CEO’s] suspension.”

(i.e., from May 2005 to December 2014) with absolutely no record evidence that during her suspension she improperly engaged in covered transactions or other irresponsible conduct, *see Martin and Yarbrough, supra*, at n. 6, would be punitive and in violation of 2 CFR 180.125.

12. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
13. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

#### DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of 9 months from the date of issuance of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 12/28/2009

*for* Rebecca Holtz Shank  
Henry S. Czauski  
Debarring Official